

61-1-4. Licensing and notice filing procedure.

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative shall obtain an initial or renewal license by filing with the division or its designee an application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's Social Security number and whatever information the division by rule requires concerning such matters as:

(A) the applicant's form and place of organization;

(B) the applicant's proposed method of doing business;

(C) (I) the qualifications and business history of the applicant; and

(II) in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(D) whether the applicant has been subject to:

(I) an injunction, administrative order, or misdemeanor conviction involving a security or any aspect of the securities business; or

(II) a felony conviction; and

(E) the applicant's financial condition and history.

(ii) An applicant's Social Security number is a private record under Subsection 63G-2-302(1)(i).

(c) The division may, by rule or order, require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

(d) A license or notice filing of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year.

(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

(ii) The division may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the 30th day after the filing of any amendment.

(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.

(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.

(v) (A) For purposes of the activities of a licensee in this state, during the time period that a broker-dealer or investment adviser is licensed in this state:

(I) the broker-dealer shall maintain a principal; and

(II) the investment adviser shall maintain a designated official.

(B) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process for a person to identify for the division:

(I) a principal or designated official at the time a license is issued; and

(II) a different principal or designated official if:

(Aa) a broker-dealer changes its principal; or

(Bb) an investment adviser changes its designated official.

(C) A principal or designated official identified in Subsection (1)(e)(v)(A) is not required to be separately licensed with the division.

(2) Except with respect to a federal covered adviser whose only clients are those described in Subsection 61-1-3(3)(b) or (3)(c)(iii), a federal covered adviser shall file with the division, before acting as a federal covered adviser in this state, a notice filing consisting of the documents filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) An applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) An applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) A person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order:

(a) require a minimum capital for a licensed broker-dealer, subject to the limitations of Section 15 of the Securities Exchange Act of 1934; and

(b) establish minimum financial requirements for an investment adviser:

(i) subject to the limitations of Section 222 of the Investment Advisers Act of 1940; and

(ii) which may include different requirements for an investment adviser who maintains custody of or has discretionary authority over client funds or securities and an investment adviser who does not.

(6) (a) The division may by rule or order require a licensed broker-dealer or investment adviser who has custody of or discretionary authority over client funds or securities to post one or more bonds in amounts and under conditions as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for a broker-dealer, and Section 222 of the Investment Advisers Act of 1940 for an investment adviser.

(b) An appropriate deposit of cash or securities may be accepted in lieu of a required bond.

(c) A bond may not be required of a licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

(d) A bond shall provide for suit on the bond by a person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) A bond shall provide that a suit may not be maintained to enforce liability on the bond unless brought before the earlier of:

- (i) the expiration of five years after the act or transaction constituting the violation; or
- (ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

Amended by Chapter 426, 2013 General Session